

**Introduced by Senator Simitian**

February 16, 2005

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An act to add Section 11110 to the Health and Safety Code, relating to nonprescription drugs.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 307, as introduced, Simitian. Dextromethorphan: sale to minors prohibited.

Existing law regulates the sale of nonprescription drugs, as specified.

This bill would, in addition, make it an infraction for any person in an over-the-counter sale to, without a prescription, willfully and knowingly deliver to a person under 18 years of age a nonprescription drug containing dextromethorphan. The bill would further provide that a retail clerk who fails to require and obtain proof of age from the purchaser shall not be guilty of an infraction, subject to any civil penalties, or subject to any disciplinary action or discharge by his or her employer, unless the retail clerk is a willful participant in an ongoing criminal conspiracy to violate the provisions prohibiting the sale of dextromethorphan to minors. By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 11110 is added to the Health and Safety Code, to read:

11110. It shall be an infraction for any person in an over-the-counter sale to, without a prescription, willfully and knowingly deliver to a person under the age of 18 years a drug, material, compound, mixture, preparation, or substance containing any quantity of dextromethorphan (the dextrorotatory isomer of 3-methoxy-N-methylmorphinan, including its salts, but not including its racemic or levorotatory forms).

(b) (1) It shall be prima facie evidence of a violation of this section if the person making the sale does not require and obtain proof of age from the purchaser, unless from the purchaser's outward appearance the person making the sale would reasonably presume the purchaser to be 25 years of age or older.

(2) For the purposes of this section, "proof of age" means any document issued by a governmental agency that contains a description or photograph of the person and gives the person's date of birth, including a passport, military identification card, or driver's license.

(c) It shall be an affirmative defense to a violation of this section if the defendant proves, by a preponderance of the evidence, all of the following:

(1) The person making the sale required and obtained proof of age from the purchaser.

(2) The purchaser falsely represented his or her age by the use of a false, forged, or altered document.

(3) The appearance of the purchaser would lead an ordinary and prudent person to believe that the purchaser was at least 18 years of age.

(4) The sale was made in good faith and in reliance upon the appearance and representation of proof of age of the purchaser.

(d) (1) Notwithstanding any other provision of this section, a retail clerk who fails to require and obtain proof of age from the purchaser shall not be guilty of an infraction pursuant to subdivision (a), subject to any civil penalties, or subject to any disciplinary action or discharge by his or her employer.

1 (2) This subdivision shall not apply to a retail clerk who is a  
2 willful participant in an ongoing criminal conspiracy to violate  
3 this section.

4 SEC. 2. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 the only costs that may be incurred by a local agency or school  
7 district will be incurred because this act creates a new crime or  
8 infraction, eliminates a crime or infraction, or changes the  
9 penalty for a crime or infraction, within the meaning of Section  
10 17556 of the Government Code, or changes the definition of a  
11 crime within the meaning of Section 6 of Article XIII B of the  
12 California Constitution.